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Via CM/ECF

January 20, 2021

Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Nichols v. Noom, Inc.*, Case No. 1:20-cv-03677-LGS: Opposition to Plaintiffs' Second Request to Establish Bellwether Proceeding.

Dear Judge Schofield:

Defendants Noom, Inc. and Artem Petakov ("Noom") write to oppose Plaintiffs' renewed request for extraordinary departures from the applicable rules in this putative nationwide class action.

This Court recently denied Plaintiffs' request to apply a bellwether construct in place of the traditional class certification process. Dec. 17, 2020 Tr. at 7:6-17 ("My thought is that I don't see any reason at all to do it . . . since the law is different in each state, it seems to me that it is unlikely that, even in rulings of law, there would be any efficiencies.") Now, a mere four weeks later, Plaintiffs have filed a renewed motion for a bellwether process—based on the very same arguments that the Court just rejected. Plaintiffs may have misperceived this Court's denial of their motion as an open invitation to file a renewed motion at any time; however, no new facts or circumstances of relevance to Plaintiffs' request exist, and the narrow conditions under which the Court suggested a renewed motion might be considered are not at issue here. *See id.* at 12:6-13 ("If at some point in the future it is clear we are talking about all 50 states and you have more or less finished discovery and it's time for trial and you want to make a proposal that we structure the trial or trials in some way that avoids trying all 50 states at once, you can raise it at that time.").

Noom is prepared to submit another substantive opposition to Plaintiffs' letter motion, if the Court is inclined to entertain it, but respectfully submits that Plaintiffs' renewed request is improper and should be summarily denied.

Sincerely,

/s/ Michael G. Rhodes
Michael G. Rhodes

Counsel for Defendants Noom Inc. and Artem Petakov